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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,479	08/28/2000	Edward L. Wright	SATC-005	8426

7590 05/23/2003

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EXAMINER
LEE, BENNY T

ART UNIT	PAPER NUMBER
2817	

DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/649479			

EXAMINER	
ART UNIT	PAPER NUMBER
	1

DATE MAILED:

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 6 MAY 2002 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), ~~2~~ days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☐ Notice re Patent Drawing, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449
4. ☐ Notice of Informal Patent Application, Form PTO-152
5. ☐ Information on How to Effect Drawing Changes, PTO-1474
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-9 are pending in the application.

   Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 1-3, 8; 4-6, 9; 7 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. ☐ Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. These drawings are ☐ acceptable; ☐ not acceptable (see explanation).

10. ☐ The ☐ proposed drawing correction and/or the ☐ proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved. ☐ disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. ☐ Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

PTOL-326 (Rev. 7-82)

EXAMINER'S ACTION

SN 649479

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CAR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6 March 2003 has been entered.

Claim 1 is objected to since in the last paragraph, --the-- should be inserted prior to "vicinity" for a proper characterization.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-3, 8; 4-6, 9; 7 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Cascone et al.

Cascone et al (fig. 2) discloses a linear-beam electron tube including electron gun (100), interaction region (108) for providing microwave interaction with the electron beam, and collector

structure (120) for receiving spent electrons. A magnetic focussing structure includes a magnet (150) as depicted in Fig. 2 and pole piece (unlabeled) located adjacent electron gun region and adjacent a side of anode (106) which is away from the collector (120). The magnetic focussing structure further includes integral yoke (152) and pole piece (unlabeled), where closed pole piece (unlabeled) is adjacent to the collector as depicted in Fig. 3. As evident from fig. 7, the configuration in Fig. 2 constitutes a "gun-only" magnetic focussing structure and the collector region (30) includes a magnetic material As a result of the magnetic field flux terminates into the magnetic material and there is no magnetic field reversal at the collector and the spent electrons inherently disperse in a manner consistent with the lack of any magnetic field flux. Furthermore, as evident from fig. 11, the collector can be of the multi-stage type which haves no magnetic field reversal.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CAR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground

provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CAR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CAR 3.73(b).

Claims 1-3, 8; 4-6, 9; 7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-14 of U.S. Patent No. 6552490. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the patent recite substantially the same subject found in the application including the critical limitation of no magnetic field reversal in the collector.

Claims 1-3, 8; 4-6, 9; 7 are directed to an invention not patentably distinct from claims 12-14 of commonly assigned U.S. Patent No. 6552490. Specifically, the claims of the noted application are not patentably distinct from the cited claims of the patent for reasons set forth in the preceding obviousness double patenting rejection.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP § 2302). Commonly assigned U.S. Patent No. 6552490, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee is required under 37 CAR 1.78© and 35 U.S.C. 132 to either show that the

conflicting inventions were commonly owned at the time the invention in this application was made or to name the prior inventor of the conflicting subject matter. Failure to comply with this requirement will result in a holding of abandonment of the application.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications filed on or after November 29, 1999.

Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication should be directed to Benny Lee at telephone number (703) 308-4902.

BENNY T. LEE
PRIMARY EXAMINER
ART UNIT 2817